

### **REMARKS**

The present amendment is in response to the Office action dated August 23, 2006, where the Examiner has rejected claim 4 under 35 USC § 112, rejected claims 8-11 under 35 USC § 102, rejected claims 1-7 and 12-24 under 35 USC § 103. In the present amendment, claims 1, 4, 8, 11, 13, and 20 have been amended. Accordingly, claims 1-24 are pending in the present application with claims 1, 8, 13, and 20 being the independent claims. Reconsideration and allowance of pending claims 1-24 in view of the amendments and the following remarks are respectfully requested.

#### **A. Rejection of Claim 4 Under 35 USC §112**

Claim 4 stands rejected under 35 USC § 112 for lack of antecedent basis. In response, applicant has amended claim 4 to correct the antecedent basis problem.

#### **B. Rejection of Claims 8-11 Under 35 USC §102**

Claims 8-11 stand rejected under section 102(b) as being anticipated by published U.S. Patent Application No. 2001/0029178 ("Criss"). The Examiner states as follows:

... Criss teaches a mobile subscriber unit, comprising: a processor 40 (figure 2) connected to a wireless communication interface 54 (figure 2) (i.e., see at least paragraphs 0017 and 0053), the processor receiving an over-the-air programming session in an over-the-air call initiated by a network and received via the wireless communication interface (i.e., see at least paragraph 0102); **an end of session detector connected to the processor for detecting an expected end of session indicator sent by the network (i.e., the processor detects the end of session indicator which is sent via FTP within a predetermined time period) (i.e., see at least paragraphs 0085, 0087, 0097, 0112, 0114);** a call terminator coupled to the end session detector (i.e., the processor 40 of figure 2), the call terminator configured to terminate the over the-air call when the end session detector fails to detect the expected end of session indicator (i.e., see at least paragraphs 0087 and 0116). [emphasis added]

Applicant has amended claim 8. Applicant asserts that Criss does not teach, suggest, or describe an end of session detector connected to the processor for detecting an expected end of session indicator sent by the network, **where the expected end of session indicator is detected without a prior request from the mobile subscriber unit** (See, e.g., paragraphs 22-24 and 29 of the specification).

Criss, on the other hand, describes a process whereby a server installs updated software on a mobile device after the mobile device sends a message to the server asking for the software update. (See, the Abstract of Criss, for example where it states that the mobile device is to inquire and obtain available software updates.)

For Example, in paragraph 85 of Criss, the processor 40 (mobile device) transmits a File Request Packet to the FTP server, in order to request that the files be transferred to the mobile device. (i.e., the mobile device is inquiring about and requesting a software update). If the requested File Packet is not received in Criss (e.g., within 5 seconds) the same request is retransmitted to the FTP server. (See, Criss at paragraph 87). If after a certain number of requests, the File Packet is still not received, the prior request routine terminates and the mobile terminal continues to operate with the existing version of the software. (See, Criss at paragraph 87).

The present claims, however, describe a process whereby the mobile device does not explicitly request the end of session indicator from the server. Therefore, even if the Examiner asserts that an FTP server sending a software update is analogous to the claimed end of session identifier, the process of sending the software update is not automatically initiated by the server in Criss, but is instead the result of a prior inquiry and/or request from the mobile device.

Therefore, in Criss the FTP server can respond to the prior request by sending the File Packet (or in the case of an error by not sending the File Packet), for example, but in either case the server is responding to a request. The current claims, however, require no explicit request from the mobile device, but instead the mobile device looks for conditions that imply the end of session indicator should have been sent, irrespective of any action by the mobile device and without a request for the end of session identifier from the mobile device. Thus, the timer in Criss, for example, is to determine that the FTP server has not responded to the prior request from the mobile unit, whereas the timer currently claimed is for detecting a condition associated with an expected end of session indicator and not a response to a request as in Criss.

Therefore, Criss does not anticipate current claim 8 or its respective dependent claims 9-11. As such, Applicant asserts that current claims 8-11 are in a condition for allowance and that the rejection under 35 USC § 102 be withdrawn.

### **C. Rejection of Claims 1-6 and 13-18 Under 35 USC §103**

Claims 1-6 and 13-18 stand rejected under section 103(a) as being unpatentable over U.S. Patent No. 6,144,849 ("Nodoushani") in view of Criss. With regard to claim 1, the Examiner states that all of its elements are described in Nodoushani, except:

... Nodoushani does not specifically teach the mobile subscriber unit terminating the OTA programming call if the expected termination of the OTA programming call by the network is not detected. In the same field of endeavor, **Criss teaches teach the mobile subscriber unit terminating the OTA programming call if the expected termination of the OTA programming call by the network is not detected** ... [emphasis added]

With regard to claim 13, the Examiner states that all of its elements are described in Nodoushani, except:

... Nodoushani does not specifically teach an end session detector connected to the transceiver circuit and configured to detect the end of session indicator received from the

system server; and a call terminator connected to the transceiver circuit and the end session detector, the call terminator configured to terminate the over-the-air programming call when the end session detector fails to detect the end of session indicator. In the same field of endeavor, **Criss teaches an end session detector connected to the transceiver circuit and configured to detect the end of session indicator received from the system server; and a call terminator connected to the transceiver circuit and the end session detector, the call terminator configured to terminate the over-the-air programming call when the end session detector fails to detect the end of session indicator.** [emphasis added]

Applicant has amended claims 1 and 13. For at least the same reasons outlined with respect to the rejections under 35 USC § 102 in subsection B, Criss cannot be relied on to perform the added limitations.

As stated in MPEP § 2143, one of the requirements of a *prima facie* case of obviousness is that the prior art reference (or references when combined) must teach or suggest all the claim limitations. As shown in subsection B, Criss requires a request from the mobile device before any response (or non-response) can occur, be detected, or be compensated for. As such, Criss does not teach suggest, or describe either of the amended limitations in claims 1 and 13. As such, Criss cannot be used to form a *prima facie* obviousness rejection.

Therefore, Criss, in conjunction with Nodoushani does render obvious claim 1 or claim 13 or their respective dependent claims 2-5 or 14-18. As such, Applicant asserts that current claims 1-6 and 13-18 are in a condition for allowance and that the rejection under 35 USC § 103 be withdrawn.

#### **D. Rejection of Claims 7 and 19-24 Under 35 USC §103**

Claims 7 and 19-24 stand rejected under section 103(a) as being unpatentable over Nodoushani in view of Criss, and in further view of U.S. Patent No. 5,257,401 ("Dahlin").

Claims 7 and 19 are dependent claims. Applicant asserts that their respective independent claims 6 and 13 are in a condition for allowance for at least the reasons described in subsection C. Therefore, dependent claims 7 and 19 are in a condition for allowance as well.

With regard to claim 20, the Examiner relies on Criss for one of the elements of claim 20. The Examiner states:

In the same field of endeavor Criss teaches the mobile subscriber unit determining that the end-of-session indicator has not been received from the wireless network the mobile subscriber unit terminating the over-the-air programming call by releasing the communication channel upon the determination that the end-of-session indicator has not been received.

Applicant has amended claim 20. For at least the same reasons outlined with respect to the rejections under 35 USC § 102 in subsection B, Criss cannot be relied on to perform the added limitations.

As stated in MPEP § 2143, one of the requirements of a *prima facie* case of obviousness is that the prior art reference (or references when combined) must teach or suggest all the claim limitations. As shown in subsection B, Criss requires a request from the mobile device before any response (or non-response) can occur, be detected, or be compensated for. As such, Criss does not teach suggest, or describe either of the amended limitations in claim 20 because Criss cannot perform the claimed step of determining, which occurs without a prior request from the mobile subscriber unit for the end-of-session indicator. As such, Criss cannot be used to form a *prima facie* obviousness rejection with regard to claim 20.

Therefore, Nodoushani, in view of Criss, and in further view of Dahlin does render obvious claims 7 and 19-24. As such, Applicant asserts that current claims 7

and 19-24 are in a condition for allowance and that the rejection under 35 USC § 103 be withdrawn.

**E. Rejection of Claim 12 Under 35 USC §103**


Claim 12 stands rejected under section 103(a) as being unpatentable over Criss, in view of Dahlin. Claim 12 is a dependent claim, which depends from claim 11, which in turn depends from independent claim 8. Applicant asserts that claim 8 is in a condition for allowance as described at least in subsection B. Applicant asserts that because claim 8 is in a condition for allowance, claim 12 is in a condition for allowance as well.

**F. Conclusion**

For all the foregoing reasons, an early allowance of claims 1-24 pending in the present application is respectfully requested. No fee is believed due in connection with this submission. If necessary, applicant requests, under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CFR 1.17(a). The Director is authorized to charge any additional fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 50-3001 of Kyocera Wireless Corp.

Respectfully Submitted,

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